

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN A. TAYLOR,	§
	§ No. 530, 2010
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court of
	§ the State of Delaware, in and for
	§ New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9408012457
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 9, 2010

Decided: January 21, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 21<sup>st</sup> day of January 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, John A. Taylor, filed an appeal from the Superior Court's July 22, 2010 order summarily dismissing his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record reflects that, in January 1996, a Superior Court jury found Taylor guilty of 2 counts of Unlawful Sexual Intercourse in the First Degree, 5 counts of Unlawful Sexual Contact in the Second Degree and 1 count of Offensive Touching. He was sentenced to a total of 32 years and 3 months of Level V incarceration, to be followed by probation. This Court affirmed Taylor's convictions on direct appeal.<sup>2</sup> This Court also affirmed the Superior Court's denial of Taylor's first postconviction motion.<sup>3</sup>

(3) In this appeal from the Superior Court's summary dismissal of his second postconviction motion, Taylor asks for "reconsideration" of the claims made in his first postconviction motion under Rule 61(i)(4) and (5).

(4) Before addressing the merits of claims made in postconviction proceedings, the Superior Court must first apply the procedural requirements of Rule 61.<sup>4</sup> It is undisputed that Taylor's claims are time barred under Rule 61(i)(1), procedurally barred as repetitive under Rule 61(i)(2), and procedurally barred as formerly adjudicated under Rule 61(i)(4). Taylor attempts to overcome the time and procedural bars by arguing that his claims

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> *Taylor v. State*, 690 A.2d 933 (Del. 1997).

<sup>3</sup> *Taylor v. State*, Del. Supr., No. 550, 2000, Holland, J. (Dec.17, 2001).

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

should be reconsidered “in the interest of justice” under Rule 61(i)(4) and (5).

(5) The record reflects that Taylor’s claims in his second postconviction motion are the same claims he made in his first postconviction motion, a fact conceded by Taylor in his opening brief. In the absence of any showing by Taylor of any change in the facts or the law applicable to his case, the Superior Court’s summary dismissal of his claims was proper.<sup>5</sup>

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>5</sup> Super. Ct. Crim. R. 61(d)(4).